

### REMARKS

This responds to the Advisory Action mailed on March 20, 2009.

No claims are amended, cancelled, or added; as a result, claims 1-37 remain pending in this application.

#### § 102 Rejection of the Claims

Claims 1-37 were rejected under 35 U.S.C. § 102(a) as being anticipated by Hecht et al (U.S. Publication No. 2003/0073489 A1).

Hecht describes a wagering game system that includes a primary sound file, and a variant sound file that is associates with a player input event. When a specific event occurs the primary sound file is played, and when the player input event occurs the primary sound file is stopped and the variant sound file is played in place of the primary sound file. The variant sound file is a variation of the primary sound file (*see*, the Abstract).

The Advisory Action argues that Hecht does play multiple audio tracks at the same time, citing the text of paragraph 52 of Hecht.

In contrast, the pending claims recite playing an audio track that comprises a plurality of selected audio element tracks that are played at the same time to create the played audio track, wherein the selected audio element tracks comprise two or more instruments played in the same key in synchronization and are selected by the wagering game machine based on at least one of random selection and a randomly ordered list.

Applicants maintain that Hecht fails to describe playing two or more tracks at the same time. More specifically, the cited paragraph 52 contains the word “simultaneously”, but the word is read out of context in the Advisory Action. The cited paragraph recites (*emphasis added*):

In addition, when the CPU *makes a change from playing an initial sound recording to a variant of that sound recording*, the change can be timed so that the transition is not on-beat, or the change can be timed so that the variant sound recording is generated on-beat with the initial sound recording. In the latter case,

the gaming device, in one embodiment, can include a suitable software metronome or metronome program which the CPU uses to make sound changes on-beat. Here, the CPU reads game state data on code-driven metronome ticks determined by a predetermined check-back rate. Using the check-back rate, *the CPU detects sound-causing events and simultaneously plays a new sound recording on-beat with an initial recording.*

As stated in the first sentence of the paragraph, the CPU is making a change from playing an initial sound recording to playing a variant of the sound recording, rather than playing two sound recordings at the same time. Further, when the transition occurs on-beat, the “CPU detects sound-causing events and simultaneously plays a new sound recording on-beat with an initial recording”. This describes that the CPU detects sound-causing events and simultaneously plays a new sound recording. Although it describes playing a new sound recording on-beat with an initial recording, it does not describe playing two sound recording simultaneously.

More specifically, the “does A and simultaneously does B” structure of the sentence can only be read as describing that A and B are done simultaneously, especially given the language in the rest of the paragraph indicating that “the CPU makes a change from playing an initial sound recording to a variant of that sound recording” and subsequent discussion of the transition between playing an initial and a variant sound recording.

Because Hecht fails to describe playing two audio tracks at the same time, Hecht further fails to disclose that two or more different instruments are played at the same time, and fails to disclose that two or more tracks played at the same time are chosen based on at least one of random selection and a randomly ordered list, irrespective of whether Hecht may consider similar limitations for single audio tracks played at a time.

Other sections of Hecht’s specification, such as the cited paragraph 55, also make clear that Hecht is about “the change from one sound recording to another” rather than playing two sounds at the same time.

Because the cited Hecht reference fails to discuss playing two or more tracks at the same time, fails to disclose that multiple tracks played at the same time comprise two or more different instruments, and fails to disclose that the multiple audio element tracks are played at the same

time to form an audio track based on at least one of random selection and a randomly ordered list, the pending claims are distinct from the cited Hecht reference. Reexamination and allowance of pending claims 1-37 is therefore respectfully requested.

**CONCLUSION**

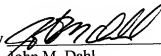
Applicant respectfully submits that the claims are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's representative at (612) 349-9581 to facilitate prosecution of this application.

If necessary, please charge any additional fees or deficiencies, or credit any overpayments to Deposit Account No. 19-0743.

Respectfully submitted,

SCHWEGMAN, LUNDBERG & WOESSNER, P.A.  
P.O. Box 2938  
Minneapolis, MN 55402  
(612) 349-9581

Date March 30, 2009

By   
John M. Dahl  
Reg. No. 44,639

**CERTIFICATE UNDER 37 CFR 1.8:** The undersigned hereby certifies that this correspondence is being filed using the USPTO's electronic filing system EFS-Web, and is addressed to: Mail Stop RCE, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on March 30, 2009.

Zhakalazky M. Carrión

Name

Signature

